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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 22, 20 14
BY Jon K. McElone ANALYST

8 **BEFORE THE**
9 **PHYSICIAN ASSISTANT BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **ROBERT COLIN WARREN, PA**

14 **445 Fairway Drive**
Novato, CA 94949

15 **Physician Assistant License No. PA 11746**

16 Respondent.

Case No. 1E-2013-230647

17 **A C C U S A T I O N**

18 Complainant alleges:

19 PARTIES

20 1. Glenn L. Mitchell, Jr. ("Complainant") brings this Accusation solely in his official
21 capacity as the Executive Officer of the Physician Assistant Board, Department of Consumer
22 Affairs.

23 2. On or about October 24, 1985, the Physician Assistant Board of California issued
24 Physician Assistant License Number PA 11746 to Robert Colin Warren ("Respondent"). The
25 license was in full force and effect at all times relevant to the charges alleged herein and will
26 expire on January 31, 2015, unless renewed.
27
28

JURISDICTION

3. This Accusation is brought before the Physician Assistant Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3527 of the Code states:

"(a) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct that includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the Board or the Medical Board of California. ..."

5. Section 3528 of the Code states:

"Any proceedings involving the denial, suspension or revocation of the application for licensure or the license of a physician assistant, the application for approval or the approval of a supervising physician, or the application for approval or the approval of an approved program under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code."

6. Section 2234 of the Code states, in relevant part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter. ..."

7. Section 2236 of the Code states, in relevant part:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

1 "...

2 "(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
3 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
4 shall be conclusive evidence of the fact that the conviction occurred."

5 8. Section 2239 of the Code states:

6 "(a) The use or prescribing for or administering to himself or herself, of any controlled
7 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
8 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
9 any other person or to the public, or to the extent that such use impairs the ability of the licensee
10 to practice medicine safely or more than one misdemeanor or any felony involving the use,
11 consumption, or self-administration of any of the substances referred to in this section, or any
12 combination thereof, constitutes unprofessional conduct. The record of the conviction is
13 conclusive evidence of such unprofessional conduct.

14 "(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
15 deemed to be a conviction within the meaning of this section. The Division of Medical Quality
16 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing
17 may order the denial of the license when the time for appeal has elapsed or the judgment of
18 conviction has been affirmed on appeal or when an order granting probation is made suspending
19 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4
20 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of
21 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,
22 information, or indictment."

23 9. Section 3531 of the Code states:

24 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
25 charge of a felony or of any offense which is substantially related to the qualifications, functions,
26 or duties of the business or profession to which the license was issued is deemed to be a
27 conviction within the meaning of this chapter. The committee may order the license suspended or
28 revoked, or shall decline to issue a license when the time for appeal has elapsed, or the judgment

1 of conviction has been affirmed on appeal or when an order granting probation is made
2 suspending the imposition of sentence, irrespective of a subsequent order under the provisions of
3 Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter
4 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information
5 or indictment."

6 10. California Code of Regulations, title 16, section 1399.525, states, in relevant part:

7 "For the purposes of the denial, suspension or revocation of a license or approval pursuant
8 to division 1.5 (commencing with section 475) of the code, a crime or act shall be considered to
9 be substantially related to the qualifications, functions or duties of a person holding a license or
10 approval under the Physician Assistant Practice Act if to a substantial degree it evidences present
11 or potential unfitness of a person holding such a license or approval to perform the functions
12 authorized by the license or approval in a manner consistent with the public health, safety or
13 welfare. Such crimes or acts shall include, but are not limited to, the following:

14 "(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
15 violation of, or conspiring to violate any provision or term of the Medical Practice Act.

16 "(b) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
17 violation of, or conspiring to violate any provision or term of the Physician Assistant Practice Act.

18 "..."

19 "(i) Conviction for driving under the influence of drugs or alcohol."

20 11. Section 2054 of the Code states, in relevant part:

21 "(a) Any person who uses in any sign, business card, or letterhead, or, in an advertisement,
22 the words 'doctor' or 'physician,' the letters or prefix 'Dr.,' the initials 'M.D.,' or any other terms or
23 letters indicating or implying that he or she is a physician and surgeon, physician, surgeon, or
24 practitioner under the terms of this or any other law, or that he or she is entitled to practice
25 hereunder, or who represents or holds himself or herself out as a physician and surgeon,
26 physician, surgeon, or practitioner under the terms of this or any other law, without having at the
27 time of so doing a valid, unrevoked, and unsuspended certificate as a physician and surgeon under
28 this chapter, is guilty of a misdemeanor. ..."

1 COST RECOVERY

2 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 13. Section 3527, subdivision (f) of the Code states "The board may order the licensee to
7 pay the costs of monitoring the probationary conditions imposed on the license."

8 FIRST CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct - Substantially Related Convictions)

10 14. Respondent's license is subject to disciplinary action for unprofessional conduct
11 under Code sections 2234(a), 2236(a) and (d), 3527(a), 3531, and California Code of Regulations,
12 title 16, section 1399.525 for substantially related convictions, in that Respondent has twice been
13 convicted of violating Vehicle Code ("VC") section 23152(b) [driving under the influence of
14 alcohol with a blood alcohol concentration ("BAC") greater than 0.08%], a misdemeanor that is
15 substantially related to the qualifications, functions, or duties of a physician assistant. The
16 circumstances are as follows:

17 (2013 DUI Conviction)

18 15. On March 9, 2013, at approximately 5:41 p.m. a State Park Peace Officer ("Officer")
19 observed Respondent driving erratically. The Officer conducted a traffic stop and interviewed
20 Respondent in his vehicle. Respondent's wife was a passenger in the vehicle. The Officer
21 noticed Respondent's display of objective signs of intoxication, and Respondent then admitted
22 that he had consumed three "tastings" of wine at approximately 2:00 p.m. during an event at a
23 winery in Hopland, California. Respondent admitted that he had started driving in Hopland, that
24 he was driving home to Marin, and that at the time of the traffic stop he had been driving for
25 approximately one and one half hours. During the interview, Respondent also stated that he was a
26 doctor.

27 16. The Officer then conducted the Standard Field Sobriety Tests ("SFSTs"). During the
28 SFSTs, Respondent pleaded, "Look, just let me sit here for a while. I won't drive. We'll just

1 wait here for a while until I'm okay. You can drive away, and we'll wait here for a while, then
2 we'll go on our way back to Marin." When the Officer declined, Respondent stated, "Isn't there
3 something we can do about this. I'm a good man. You don't know me. There's people I can call.
4 People who will tell you I'm a good man. Highway Patrol Officers who will tell you that. I've
5 removed bullets out of Highway Patrol Officers. There's got to be something that we can do.
6 You can even throw my keys away. I'm telling you we'll just wait here in the car." Respondent
7 failed the SFSTs.

8 17. After administering the SFSTs, the Officer asked Respondent to submit to a
9 Preliminary Alcohol Screening ("PAS") test. Respondent said, "No. You've given me all these
10 tests and I've passed. I'm not going to take it." Respondent then inquired as to whether the PAS
11 test was a breath test, which the Officer confirmed. Respondent then turned and placed his hands
12 behind his back and said, "Well, go ahead and take me in then." After the Officer placed
13 Respondent in handcuffs, Respondent indicated that he wanted to take the PAS test. The Officer
14 then released Respondent from the handcuffs and returned to his vehicle to get the PAS testing
15 device. At that time, Respondent hurriedly walked toward his vehicle. The Officer commanded
16 that he stop twice, but Respondent continued toward the passenger side of his vehicle where his
17 wife handed him a bottle of water. Respondent quickly tried to drink from it, but the Officer
18 grabbed the bottle from his hand before he could drink. The Officer indicated that Respondent
19 was not permitted to eat or drink prior to taking the PAS test.

20 18. At approximately 6:13 p.m., 6:17 p.m., and 6:19 p.m., the Officer administered the
21 PAS test. At 6:13 p.m., the PAS test registered a BAC of 0.118%. When attempting to test
22 Respondent once more, Respondent blew very softly and stuck his tongue into the mouthpiece
23 while making exaggerated facial expressions. The Officer then proceeded to administer the PAS
24 test again at 6:17 p.m. and 6:19 p.m., which registered a BAC of 0.126% and 0.120%,
25 respectively.

26 19. The Officer then offered Respondent a choice between an evidentiary blood or breath
27 test, which Respondent declined, saying that he would not do any test until he had a drink of
28 water. The Officer then informed Respondent that he could not drink water until after the test

1 was performed. Respondent then raised his voice and repeatedly declined the test. At
2 approximately 7:55 p.m., a forced blood sample was taken from Respondent at St. Helena
3 Adventist Hospital in Clearlake, California. The sample was transmitted to the Department of
4 Justice Bureau of Forensic Services in Santa Rosa, California for testing. At approximately 8:13
5 p.m., Respondent was placed under arrest for violating VC section 23152(a) [driving under the
6 influence of an alcoholic beverage] and VC section 23152(b) [driving under the influence of an
7 alcoholic beverage with a BAC of 0.08% or greater].

8 20. On March 18, 2013, the Department of Justice Bureau of Forensic Services reported
9 that Respondent's blood sample taken on March 9, 2013 measured 0.11% BAC.

10 21. On April 16, 2013, a criminal complaint entitled *The People of the State of California*
11 *v. Robert Colin Warren*, filed in Superior Court of Lake County, Case Number CR 931954,
12 charged Respondent with violating VC 23152(a) and VC 23152(b), both misdemeanors, with the
13 following special allegations: (1) sustaining a prior conviction for violating VC section 23152(b)
14 on October 13, 2004; and (2) refusing to willfully submit to a peace officer's request for a
15 chemical test within the meaning of VC section 23577 [refusal to take or failure to complete a
16 chemical test], 23578 [excessive blood alcohol or refusal to take a chemical test], and 23538(b)(2)
17 [probation conditions].

18 22. On July 15, 2013, Respondent was convicted by plea of no contest for violating VC
19 section 23152(b), and the remaining charges were dismissed. Respondent was sentenced to 5
20 years probation, \$1,833.00 in fines and fees, and completion of a multiple offender drinking
21 driver's program.

22 (2004 DUI Conviction)

23 23. On September 29, 2004, a criminal complaint entitled *The People of the State of*
24 *California v. Robert Colin Warren*, filed in Superior Court of Marin County, Case Number CR
25 137777A, charged Respondent with violating VC section 23152(a) and VC section 23152(b),
26 both misdemeanors, for driving under the influence of alcohol on September 18, 2004.

27 24. On October 13, 2004, Respondent was convicted by guilty plea for violating VC
28 section 23152(b), and the remaining charge was dismissed. Respondent was sentenced to 3 years

1 probation, \$1,410.00 in fines and restitution, and completion of a first offender drinking driver's
2 program.

3 25. Respondent's license is subject to disciplinary action for unprofessional conduct
4 under Code sections 2234(a), 2236(a) and (b), 3527(a), 3531, and California Code of Regulations,
5 title 16, section 1399.525 for substantially related convictions, in that Respondent has twice been
6 convicted of violating VC section 23152(b) [driving under the influence of alcohol with a BAC
7 greater than 0.08%], a misdemeanor that is substantially related to the qualifications, functions, or
8 duties of a physician assistant.

9 SECOND CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct - Excessive Use of Alcohol in a Manner Dangerous to Oneself or
11 Others)

12 26. Paragraphs 12 through 23 are incorporated herein.

13 27. Respondent's license is subject to disciplinary action for unprofessional conduct
14 under Code sections 3527(a) and 2239 for the excessive use of alcohol in a manner dangerous
15 Respondent or others, in that Respondent has twice been convicted of violating VC section
16 23152(b) for driving under the influence of alcohol with a BAC greater than 0.08%. Moreover,
17 Respondent sustained his April 15, 2013 conviction after driving under the influence with his
18 wife as a passenger in his vehicle.

19 THIRD CAUSE FOR DISCIPLINE

20 (Unprofessional Conduct – Misrepresentation as a Physician and Surgeon)

21 28. Paragraphs 12 through 23 are incorporated herein.

22 29. Respondent's license is subject to disciplinary action for unprofessional conduct
23 under Code sections 3527(a) and 2054 for misrepresenting himself as a physician and surgeon, in
24 that during the traffic stop of his March 9, 2013 arrest, Respondent told the arresting officer that
25 he was a doctor.

26 PRAYER

27 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
28 and that following the hearing, the Physician Assistant Board of California issue a decision:

- 1 1. Revoking or suspending Physician Assistant License Number PA 11746, issued to
- 2 Robert Colin Warren, PA;
- 3 2. Ordering Robert Colin Warren to pay the Physician Assistant Board of California the
- 4 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
- 5 Professions Code section 125.3, and, if placed on probation, the cost of probation monitoring,
- 6 pursuant to Business and Professions Code section 3527, subdivision (f); and
- 7 3. Taking such other and further action as deemed necessary and proper.

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10 DATED: May 22, 2014



GLENN L. MITCHELL, JR.
Executive Officer
Physician Assistant Board
Department of Consumer Affairs
State of California
Complainant

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